Nos. 79-1711; 79-1754; 79-1760; 80-12 (Consolidated)

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

MIDDLESEX COUNTY SEWERAGE AUTHORITY, *et al.*
Petitioners (79-1711)

v.

NATIONAL SEA CLAMMERS ASSOCIATION, *et al.*

JOINT MEETING OF ESSEX AND UNION COUNTIES,
Petitioner (79-1754)

v.

NATIONAL SEA CLAMMERS ASSOCIATION, *et al.*

CITY OF NEW YORK AND ABRAHAM BEAME,
Petitioners (79-1760)

v.

NATIONAL SEA CLAMMERS ASSOCIATION, *et al.*

ENVIRONMENTAL PROTECTION AGENCY, *et al.*
Petitioners (80-12)

v.

NATIONAL SEA CLAMMERS ASSOCIATION, *et al.*

On Writs of Certiorari to the United States Court of Appeals for the Third Circuit

JOINT APPENDIX

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PETITIONS FOR CERTIORARI FILED APRIL 29, 1980 (79-1711); MAY 5, 1980 (79-1754); MAY 5, 1980 (79-1760); JULY 3, 1980 (80-12)
CERTIORARI GRANTED OCTOBER 20, 1980

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INDEX

	PAGE
Relevant Docket Entries in Court of Appeals	1a
Relevant Docket Entries in District Court	6a
Complaint	18a
Note Concerning Opinion and Judgment of Court of Appeals and Opinion and Order of District Court	47a
Order Granting Writs	48a

JOINT APPENDIX

Relevant Docket Entries in Court of Appeals

Case No. 79-1360

Date	*Filings—Proceedings*
3-21-79	Certified copy of Notice of Appeal, received February 20, 1979, filed.
	Record, received March 12, 1979, filed.
	Appearance of James M. Marsh, and Dean F. Murtagh, Esqs.; LaBrum and Doak for appellants, filed.
	• • •
4-30-79	Brief for appellant, filed. Service of brief and appendix by mail on 4-30-79 attached.
4-30-79	Appendix, filed.
5-29-79	Brief for appellee (and supplemental appendix, received for the information of the Court), The Linden Roselle Sewerage Authority, filed. (25cc.)
5-29-79	Brief for appellees, City of New York and Abraham Beame, filed. (25cc.) Service of brief by mail on 5-29-79 attached.
5-30-79	Brief for appellee, Passaic Valley Sewerage Commissioners, filed. (25cc.)
5-30-79	Supplemental appendix for appellee, Passaic Valley Sewerage Commissioners, received for the information of the Court. (10cc.) Not filed unless Ct. directs.
	• • •

Relevant Docket Entries in Court of Appeals

Date	*Filings—Proceedings*
5-31-79	Brief for appellee, City of Long Beach, rec'd June 4, 1979, filed. Service by mail on 5-31-79 attached.
6-4-79	Letter dated June 1, 1979 from Vincent J. Jennings, Esq., counsel for appellee, Township of Middletown Sewerage Authority, advising that he will rely on the arguments set forth in the U. S. District Court's opinion which disposes of all the arguments advanced in the appellant's brief and will not burden the Court with a brief on this subject, rec'd.
	* * *
6-4-79	Brief for appellee, The Joint Meeting of Essex and Union Counties, filed.
6-8-79	Reply brief for appellants, filed. Service by mail on 6-8-79 attached.
	* * *
6-21-79	Brief for appellee, Bergen County Utilities Authority, rec'd June 7, 1979, filed.
	* * *
5-31-79	Brief for appellee, Middlesex County Sewerage Authority, filed. Service of brief (and appendix) by mail on May 31, 1979 attached.
	* * *

Relevant Docket Entries in Court of Appeals

Date	*Filings—Proceedings*
7-3-79	Appendix for appellee, Middlesex County Sewerage Authority, (incorporated within the brief filed 5-31-79), rec'd May 31, 1979, filed.
	* * *
7-10-79	Appendix for appellee, The Joint Meeting of Essex & Union Counties, received June 4, 1979, filed. (10cc)
	* * *
8-2-79	Brief for appellees, United States Environmental Protection Agency, Russell E. Train, United States Army Corps of Engineers and Martin R. Hoffman, rec'd July 25, 1979, filed. Service by mail on 7-20-79 attached.
8-6-79	Copy of Environmental Impact Statement on the Ocean Dumping of Sewage Sludge in the New York Bight (Final ed., September 1978), rec'd from Ralph A. Jacobs, Esq., for the information of the Court. (4cc)
	* * *
10-16-79	Argued. Coram: Gibbons and Higginbotham, C.J. and Weiner, D.J.
	* * *
2-5-80	Opinion of the Court (*Gibbons* and Higginbotham, C.J. and Weiner, D.J.*), filed.

*Honorable Charles R. Weiner, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

Relevant Docket Entries in Court of Appeals

Date	*Filings—Proceedings*
2-5-80	Judgment affirming the judgment of the District Court filed January 9, 1979, as to that portion of the judgment dismissing the Refuse Act claim, the Federal Tort claims Act and state tort claims act claims, and the constitutional claims; reversing that part of the judgment dismissing the complaint to the extent that it dismissed plaintiffs' claims under the Federal Water Pollution Control Act, the Marine Protection, Research and Sanctuaries Act, their common law nuisance claims and their maritime tort claims; vacating that portion of the judgment dismissing the National Environmental Policy Act claim and remanding that claim for consideration of the record developed on remand; and remanding the cause to the district court for further proceedings, consistent with the opinion of this Court, filed.
	* * *
3-21-80	Certified judgment in lieu of formal mandate issued.
	* * *
5-6-80	Notice of filing on April 29, 1980 of petition for writ of certiorari, rec'd from Clerk of the S.C., filed. (S.C. No. 79-1711)
5-9-80	Notice of filing on May 5, 1980 of petition for writ of certiorari, rec'd from Clerk of the S.C., filed. (S.C. No. 79-1754)

Relevant Docket Entries in Court of Appeals

Date	*Filings—Proceedings*
5-12-80	Notice of filing on May 5, 1980 of petition for writ of certiorari, rec'd from Clerk of the S.C., filed. (S.C. No. 79-1760)
7-15-80	Notice of filing on July 3, 1980 petition for writ of certiorari, rec'd from Clerk of the S.C., filed. (S.C. No. 80-12)

(SEAL)

A True Copy:

M. ELIZABETH FERGUSON
Chief Deputy Clerk

Relevant Docket Entries in District Court

DOCKET No. 77-0126

NATIONAL SEA CLAMMERS ASSOCIATION and GOSTA LOVGREN,

Plaintiffs,

CITY OF NEW YORK, HONORABLE ABRAHAM BEAME, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, RUSSELL E. TRAIN, individually and as ADMINISTRATOR OF THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, UNITED STATES ARMY CORPS OF ENGINEERS, DAVID J. BARDIN, BERGEN COUNTY SEWER AUTHORITY, THE JOINT MEETING OF ESSEX AND UNION COUNTIES, PASSAIC VALLEY SEWERAGE COMMISSIONERS, MIDDLESEX COUNTY SEWERAGE AUTHORITY, THE LINDEN ROSELLE SEWERAGE AUTHORITY, MIDDLETOWN SEWERAGE AUTHORITY, WEST LONG BEACH SEWER DISTRICT, COUNTY OF WESTCHESTER, Dept. of ENVIRONMENTAL FAC., CITY OF LONG BEACH AND CITY OF GLEN COVE,

Defendants.

Cause

Action to enjoin defendants from coastal sewage and sludge dumping

Attorneys

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Relevant Docket Entries in District Court

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(Bergen County Sewer County)

Wilentz, Goldman & Spitzer, Esqs.
252 Madison Ave.
Perth Amboy, N. J. 08862
(Middlesex County Sewerage Authority)

Philip Kaufman, Esq.
3 Norwood Ave.
Spotswood, N. J. 08884
(City of N.Y. and Abraham Beame)

George J. Minish, Esq.
614 Eagle Rock Avenue
West Orange, N. J. 07052
(Joint Meeting of Essex & Union Counties)

Relevant Docket Entries in District Court

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(City of Glen Cove)

Allan L. Tumarkin, Esq.
290 S. Livingston Ave.
Livingston, N. J. 07039
(City of Long Beach)

U. S. ATTORNEY (for federal defendants)

Date	*Proceedings*
1-21-77	Complaint filed 1-14-77.
	• • •
1-21-77	Demand for trial by *Jury* filed 1-20-77.
1-21-77	Notice of Allocation and Assignment filed 1-20-77. (Newark—Meanor)
2-7-77	Summons returned served on Martin R. Hoffman, United States Army Corps of Engineers, Russell E. Train and United States Environmental Protection Agency all on 1-27-77 filed.
	• • •
2-15-77	*Answer* of defendant, The Joint Meeting of Essex and Union Counties and proof of service filed 2-14-77.

Relevant Docket Entries in District Court

Date	*Proceedings*
2-17-77	*Answer* of defendant, Passaic Valley Sewerage Commissioners to the complaint; *crossclaims* against defendants, Environmental Protection Agency, Russell E. Train, Army Corps of Engineers, Martin R. Hoffman, New Jersey Department of Environmental Protection and David J. Bardin and proof of service filed 2-16-77.
2-18-77	*Answer* of defendant, Township of Middletown Sewerage Authority to the complaint and proof of service filed.
	• • •
3-1-77	*Answer* of defendant, Middlesex County Sewerage Authority, *crossclaims* against defendants, Environmental Protection Agency, Russell E. Train, Army Corps of Engineers, Martin R. Hoffman, New Jersey Department of Environmental Protection and David J. Bardin and proof of service filed 2-28-77.
3-1-77	*Answer* of defendant, The Linden Roselle Sewerage Authority to the complaint; *crossclaims* against defendants, Environmental Protection Agency, Russell E. Train, Army Corps of Engineers, Martin R. Hoffman, New Jersey Department of Environmental Protection and David J. Bardin and proof of service filed.
3-7-77	*Answer* of defendant, Joint Meeting of Essex and Union Counties to crossclaim of defendant Passic Valley Sewerage Commissioners filed.
	• • •

Relevant Docket Entries in District Court

Date	*Proceedings*
3-11-77	*Answer* of defendant, Linden Roselle Sewerage Authority to crossclaim of defendant, Passaic Valley Sewerage Commissioners filed 3-10-77.
	* * *
3-15-77	*Answer* of defendant, Joint Meeting of Essex and Union Counties to crossclaim of defendant, Linden Roselle Sewerage Authority filed.
3-17-77	*Answer* of defendant, Joint Meeting of Essex and Union Counties to crossclaim of defendant, Middlesex County Sewerage Authority filed 3-16-77.
3-17-77	*Answer* of defendant, Joint Meeting of Essex and Union Counties to crossclaim of defendant, City of Glen Cove filed 3-16-77.
	* * *
3-18-77	*Answer* of defendant, Linden Roselle Sewerage Authority to crossclaim of defendant, City of Glen Cove filed.
3-18-77	*Answer* of defendant, Linden Roselle Sewerage Authority to crossclaim of defendant, Middlesex County Sewerage Authority filed.
3-24-77	*Answer* of defendant, Bergen County Sewer Authority to the complaint; *crossclaims* against all other defendants and proof of service filed 3-23-77.
	* * *

Relevant Docket Entries in District Court

Date	*Proceedings*
3-28-77	*Answer* of defendant, Passaic Valley Sewerage Commissioners to crossclaim of defendant, City of Glen Cove and proof of service filed.
	• • •
3-29-77	*Answer* of defendant, Passaic Valley Sewerage Commissioners to crossclaim of defendant, Bergen County Sewer Authority and proof of service filed.
4-5-77	*Answer* of defendant, Joint Meeting of Essex and Union Counties to crossclaim of Bergen County Sewer Authority filed 4-4-77.
4-5-77	*Answer* of defendant, Linden Roselle Sewerage Authority to crossclaim of Bergen County Sewer Authority, filed.
4-11-77	Consent Order substituting attorney for Defendant Middlesex County Sewerage Authority, filed 4-7-77. (Meanor) Notice Mailed.
4-12-77	Plaintiff's notice of dismissal of action as to defendants, New Jersey Department of Environmental Protection and David J. Bardin, as Commissioner, filed 4-11-77.
	• • •
4-19-77	*Answer* of defendants The City of New York and Honorable Abraham Beame, filed 4-18-77.

Relevant Docket Entries in District Court

Date	*Proceedings*
5-3-77	*Order dismissing Complaint and all cross-claims against* the Defendants New Jersey Department of Environmental Protection, David J. Bardin, individually and as Commissioner of the New Jersey Department of Environmental Protection, the New York Department of Environmental Conservation and Ogden R. Reid, individually and as Commissioner of the New York Department of Environmental Conservation, without costs, filed 4-26-77. (Meanor) Notice Mailed.
5-9-77	Notice of motion of defendant, Passaic Valley Sewerage Commissioners for dismissal of complaint, returnable 6-13-77, and proof of service filed. (Brief submitted)
	* * *
5-17-77	Notice of Motion of Defendant Middlesex County Sewerage Authority, to dismiss complaint, returnable 6-13-77, statement in lieu of brief, and affidavit of service filed 5-16-77.
5-18-77	Notice of Motion of Defendant Joint Meeting of Essex and Union Counties to dismiss complaint, returnable 6-13-77 and certificate of service filed 5-17-77. (Statement in lieu of brief)
	* * *
5-23-77	Notice of Motion of Defendant Bergen County Sewer Authority to dismiss complaint, returnable 6-13-77, and certificate of service filed. (Brief Submitted)

Relevant Docket Entries in District Court

Date	*Proceedings*
5-25-77	Notice of motion of Defendant Linden Roselle Sewerage Authority for dismissal of action, returnable 6-13-77, statement in lieu of brief and affidavit of service, filed 5-24-77.
	• • •
5-27-77	Notice of Motion of Defendant, Township of Middletown Sewerage Authority to dismiss complaint, returnable 6-27-77, and certificate of service filed 5-25-77. (Brief of Passaic Valley Severage Authority to be relied upon)
	• • •
11-10-77	Notice of motion of Defendant Passaic Valley Sewerage Commissioners for dismissal of complaint, returnable 11-28-77, and certificate of service filed 11-9-77. (Brief submitted)
	• • •
1-3-78	*Amended answer* of defendant The Joint Meeting of Essex and Union Counties and *crossclaim* against co-defendants, filed.
	• • •
1-10-78	*Answer* of defendant Passaic Valley Sewerage Commissioners to crossclaim of defendant, Joint Meeting of Essex and Union Counties, filed 1-9-78.

Complaint

Relevant Docket Entries in District Court

Date	*Proceedings*
1-16-78	*Answer* of defendant Linden Roselle Sewerage Authority to crossclaim of defendant, Joint Meeting of Essex and Union Counties, filed 1-13-78.
	• • •
3-15-78	Notice of motion of defendant Bergen County Sewer Authority for dismissal of action, returnable 4-10-78, and proof of service filed 3-14-78. (Brief Submitted)
	• • •
3-16-78	Notice of motion of defendant Passaic Valley Sewerage Commissioners for dismissal of all counts of complaint, returnable 4-10-78, and certificate of service filed 3-15-78. (Brief submitted)
	• • •
3-16-78	Notice of motion of defendant The Linden Roselle Sewerage Authority to dismiss complaint, returnable 4-10-78, brief and affidavit of mailing filed 3-15-78.
3-17-78	Notice of motion of defendant Joint Meeting of Essex and Union Counties for dismissal of complaint, returnable 4-10-78, and certificate of mailing filed 3-16-78. (Brief Submitted)

Relevant Docket Entries in District Court

Date	*Proceedings*
3-20-78	Notice of motion of defendants the City of New York and Hon. Abraham Beame, for dismissal of action, returnable 4-10-78, and affidavit of service filed 3-20-78. (To Rely on brief filed in support of their motion for summary judgment)
	• • •
4-3-78	Notice of motion of the defendant Township of Middletown Sewerage Authority for dismissal of complaint, returnable 4-24-78, statement in lieu of brief and certificate of mailing, filed 3-29-78.
4-3-78	Notice of motion of defendant Middlesex County Sewerage Authority for dismissal of complaint, returnable 4-24-78, statement in lieu of brief and certificate of mailing filed 3-29-78.
	• • •
8-15-78	Opinion filed 8-14-78. (Meanor) (Dismissing action)
8-29-78	*Order granting motion of defendant Middlesex County Sewerage Authority* for summary judgment with costs in favor of the defendant Midsex County Sewerage Authority and against the plaintiffs National Sea Clammers Association and Gosta Lovgren, filed 8-28-78. (Meanor) Notice Mailed.
	• • •

Relevant Docket Entries in District Court

Date	*Proceedings*
9-5-78	*Order for dismissal of action with costs in favor of defendant* The Linden Roselle Sewerage Authority and against plaintiffs National Sea Clammers Association and Gosta Lovgren filed 8-31-78. (Meanor) Notice mailed
	• • •
1-11-79	Order amending Opinion of August 14, 1978, filed 1-9-79. (Meanor) (Notice mailed)
1-11-79	Order dismissing Complaint in favor of defendants, City of New York Honorable Edward Koch, United States Environmental Protection Agency, Russell E. Train, individually and as Administrator of the United States Environmental Protection Agency, United States Army Corps of Engineers, Bergen County Sewer Authority, The Joint Meeting of Essex and Union Counties, Passaic Valley Sewerage Commissioners, Middletown Sewerage Authority, West Long Beach Sewer District, County of Westchester, City of Long Beach, City of Glen Cove, and Martin R. Hoffman, individually and as Secretary of the United States Department of the Army, and against, plaintiffs, National Sea Clammers Association and Gosta Lovgren, with costs; and dismissing all crosselaims, without costs, filed 1-9-79. (Meanor) (Notice mailed)
2-15-79	Plaintiffs' Notice of appeal filed 2-9-79 at 2:30 p.m.

Relevant Docket Entries in District Court

Date	*Proceedings*
3-9-79	Record on Appeal sent to U.S.C.A. (Notice mailed)

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of the original on file in my office.

ATTEST:

ANGELO W. LOCASCIO, Clerk
United States District Court
District of New Jersey
By: JONATHAN D. DAVIS
Deputy Clerk

Complaint

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW JERSEY

Jurisdiction

1. This action also arises under the laws of the United States, more particularly the National Environmental Policy Act of 1969, Title 42, U.S.C., §4321, et. seq., the Federal Water Pollution Control Act, as amended, Title 33, U.S.C., §2151, et seq., the Marine Protection, Research, and Sanctuaries Act of 1972 (Ocean Dumping Act), Title 33, U.S.C., §1401, et seq., and the Rivers and Harbors Act of 1899 (Refuse Act), Title 33, U.S.C., §407.

2. The jurisdiction of this Court is invoked under Title 28, U.S.C., §1331(a) as this action arises under the Constitution of the United States, more particularly Article VI, Clause 2, the Ninth Amendment, the Fifth Amendment, and the Fourteenth Amendment, under Title 28, U.S.C., §1343 and Title 42, U.S.C., §1983, under Title 28, U.S.C., §1333(1) and Title 46, U.S.C., §740 (The Extension of Admiralty and Maritime Jurisdiction Act), under Title 28, U.S.C., §1346(b) and Title 28, U.S.C., §2671, et. seq. (Federal Tort Claims Act), under Title 28, U.S.C., §1337, under Title 5, U.S.C., §701 et. seq. (Administrative Procedure Act), and under Title 28, U.S.C., §1361 (Mandamus), and under Title 28, U.S.C., §1332.

3. The notice requirements and presentation of claim requirements have been complied with.

Complaint

Plaintiffs

4. Plaintiff, National Sea Clammers Association, is an incorporated association which has its principal office in Absecon, Atlantic County, New Jersey and brings this action on behalf of its members and on behalf of the class.

5. Plaintiff, Gosta Lovgren, is a citizen of the United States and of New Jersey and resides in Point Pleasant, Ocean County, New Jersey. Plaintiff is a member of the National Sea Clammers Association and brings this action on his own behalf and on behalf of the members of the class.

Defendants

6. Defendant, City of New York, hereinafter referred to as NYC, is a municipal corporation, organized and existing under and by virtue of the laws of the State of New York and has a population in excess of 9,900,-000.

7. Defendant, Abraham Beame, hereinafter referred to as Beame, is a citizen of the State of New York and is the Mayor of the City of New York.

8. Defendant, Environmental Protection Agency, hereinafter referred to as EPA, is a federal agency created under the provisions of Title 5, U.S.C., §901 et seq.

9. Defendant, Russell E. Train, hereinafter referred to as Train, is the Administrator of the Environmental Pro-

tection Agency created by and in accordance with the provisions of Title 5, U.S.C., §901 et. seq.

10. Defendant, Army Corp of Engineers, hereinafter referred to as Army Corps, is an agency of the United States Government created under the provisions of Title 40, U.S.C., §51.

11. Defendant, Martin R. Hoffman, hereinafter referred to as Hoffman, is Secretary of the Army of the Department of the Army, a position created by and in accordance with Title 10, U.S.C., §3012.

12. Defendant, New York Department of Environmental Conservation, hereinafter referred to as NYDEC, is an agency of the State of New York created under the provisions of the State of New York's Environmental Conservation Law, §3-0101 et. seq.

13. Defendant, Ogden R. Reid, hereinafter referred to as Reid, is the Commissioner of the New York Department of Environmental Conservation created by and in accordance with the provisions of the State of New York's Environmental Conservation Law §3-0101 et. seq.

14. Defendant, New Jersey Department of Environmental Protection, hereinafter referred to as NJDEP, is an agency of the State of New Jersey created under the provisions of Title 13, N.J.S.A., §1D-1 et seq.

15. Defendant, David J. Bardin, hereinafter referred to as Bardin, is the Commissioner of the New Jersey Department of Environmental Protection created by and in accordance with the provisions of Title 13, N.J.S.A., §1 D-1 et seq.

16. Defendants, Bergen County Sewer Authority, hereinafter referred to as Bergen Co., The Joint Meeting of Essex and Union Counties, hereinafter referred to as Essex Co., Passaic Valley Sewerage Authority, hereinafter referred to as Passaic Val., Middlesex County Sewerage Authority, hereinafter referred to as Middlesex Co., The Linden Roselle Sewage Authority, hereinafter referred to as Linden Roselle, and Middletown Sewerage Authority, hereinafter referred to as Middletown, are all governmental units in the State of New Jersey organized and existing under and by virtue of the laws of the State of New Jersey.

17. Defendants, West Long Beach Sewer District, hereinafter referred to as W. Long Beach, County of Westchester Department of Environmental Facilities, hereinafter referred to as Westchester Co., City of Long Beach, hereinafter referred to as Long Beach, and City of Glen Cove, hereinafter referred to as Glen Cove, are all governmental units in the State of New York organized and existing under and by virtue of the laws of the State of New York.

Class Action Allegation

18. Plaintiffs bring this action on their own behalf and as a class action on behalf of others similarly situated, in accordance with the provisions of Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

19. The persons who constitute the class are so numerous that joinder of all members is impracticable; there are questions of law and fact common to the entire class;

the claims of plaintiff are typical of the claims of the entire class; and plaintiff will fairly and adequately protect the interests of the entire class.

20. Separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for the party opposing the class.

21. The questions of law and fact common to the members of the class predominate over any questions affecting only individual members, and a class action is superior to other available methods for fair and efficient adjudication of the controversy.

COUNT I

22. Defendants, New York City and Beame, have in the past and continue to own, operate, and control a sewage system which provides the means for the removal of the City's waste products.

23. Defendants, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown have in the past and continue to own, operate, and control sewage systems which provide the means for the removal of waste products from areas over which they exercise authority.

24. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and

Middletown, have in the past and continue to cause sewage, sludge, and waste materials, some of which are toxic, to be discharged into the Hudson River, a navigable waterway and natural resource situated to the west of New York City, and into New York Harbor, a navigable waterway and natural resource situated to the south of New York City by means of the overflow and outfall systems connected with the operation of the sewage systems.

25. Such sewage and sludge which is released into the Hudson River and New York Harbor is carried into the waters of the Atlantic Ocean, a navigable body of water and natural resource, situated off the east coast of the United States.

26. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, conduct the discharge of sewage, sludge, and waste material including toxic substances through the overflow and outfall systems with the consent, approval, and direction of the NYDEC and Reid, Commissioner, which agency of the State of New York has the responsibility of enforcing the regulation of such discharge under the New York Statute, Environmental Conservation Law, §1-0101, et seq., and with the consent, approval and direction of the EPA and Train, Administrator, which agency of the United States government has the responsibility of creating and enforcing standards and regulations of such discharge under the Water Pollution Control Act, Title 33, U.S.C., §1251 et. seq.

27. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Es-

sex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, have in the past and continue to cause sewage, sludge, dredged materials, and waste material including toxic substances to be dumped into the Atlantic Ocean by means of conveyance upon maritime vessels.

28. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, conduct the dumping of sewage, sludge, dredged material and waste including toxic substances into the Atlantic Ocean with the consent, approval and direction of the defendants EPA and Train and defendants Army Corps and Hoffmann, which agencies of the United States government have the responsibility of creating and enforcing standards and regulations regarding ocean dumping under the Marine Protection, Research, and Sanctuaries Act, Title 33, U.S.C., §1401 et. seq.

29. Defendant, Army Corps, has and continues to conduct and control dredging operations in New York Harbor.

30. Defendant, Army Corps, has and continues to cause dredged sludge, sewage sludge, and waste material including toxic substances to be dumped into the Atlantic Ocean by means of conveyance upon maritime vessels.

31. Defendant, Army Corps, conducts such dredging operation and dumping operation with the consent, approval, and direction of the EPA and Train and Hoffman, which parties have the responsibility of creating and enforcing standards and regulations regarding ocean dumping under the Marine Protection, Research, and Sanctuaries Act, Title 33, U.S.C., §1401, et. seq.

32. The waters of the Atlantic Ocean have always been and remain an integral part of the ecologically balanced biosphere, have always possessed a complex yet flexible system whereby life is propagated and sustained, and have always possessed the ability to cleanse and purify themselves and eleminate the adverse effects created by pollutants.

33. The waters of the Atlantic Ocean have provided and continue to provide the people of this nation and the people of New Jersey and, more particularly, the people who use the waters, with a source of enjoyment, comfort, inspiration, recreation, employment, and sustenance, and thereby, such waters have been and remain a vital asset to the people and sovereign in whom traditionally has rested the duty to protect such natural resource and public trust.

34. In and about the summer of 1976, it was discovered that the marine environment of the Atlantic Ocean was being inundated by a massive rapid growth of algae which was described as a "black mass" and a "blanket of algae".

35. Such algae growth covered an area of the Atlantic Ocean ranging from approximately the southwest portion of Long Island, New York to a point approximately due east of Cape May, New Jersey, and extending from a few miles offshore to more than 20 miles out to sea.

36. Such algae growth was caused and continues to be caused by the nutrient-rich sewage and other waste materials, including toxic substances, deposited in the waters of the Atlantic Ocean by defendants New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co.,

Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown.

37. Such discharged sewage, sludge, dredged material, and other waste materials, including toxic substances, as well as the algae growth, have caused and continue to cause an ecological imbalance and a condition which interferes with the cleansing processes and capabilites of the waters and thereby have produced and continue to produce a marine environment which is adverse for the maintenance of marine life.

38. Such discharged sewage, sludge, dredged material, and other wastes including toxic substances and the algae growth have caused and continue to cause harmful layers of sediment and harmful accumulations of sludge on the ocean floor which have had and continue to have an adverse impact on the marine environment and its ability to maintain life.

39. Such discharged sewage, sludge, dredged materials and other waste, including toxic materials and the algae growth, have caused and continue to cause massive destruction of marine plant life, fish, clams, lobsters and other marine life unable to escape and thereby, has caused and continues to cause the collapse of the fishing, clamming and lobster industries which operate in the waters of the Atlantic Ocean.

40. Such discharged sewage, sludge, dredged material and other wastes including toxic materials, and the algae growth, have caused and continue to cause the pollution and the destruction of the property held in trust by the sovereign for the public benefit.

41. Such discharged sewage, sludge, dredged material, other wastes including toxic materials, and the algae growth as well as the polluted and destroyed ocean environment have caused and continue to cause noxious and offensive odors as well as noxious and offensive sights which adversely affect those who come in contact with the Atlantic Ocean.

42. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, by such discharged sewage, sludge, dredged material, other wastes including toxic materials and algae growth as well as the polluted and destroyed ocean environment have caused and continue to cause a nuisance, annoyance, inconvenience, and harm to the safety, welfare, health, and comfort of the public and of those who use or encounter the ocean waters which constitute the public trust and more particularly of plaintiffs and all within the class.

43. The plaintiffs and all within the class have been and continue to be engaged in taking fish, digging clams, and catching lobsters as a vocation and source of livelihood in the waters of the Atlantic Ocean held in trust for the public benefit.

44. Nevertheless, the plaintiffs and all within the class have been and continue to be engaged in a use of the public trust different from that of the general public and have had and continue to have vested expectations arising out of the public's fishing and navigational rights which are different in kind from those of the public in general.

45. The plaintiffs and all within the class as well as the general public have suffered vast damage and harm to their health, safety, welfare, property and livelihood as well as an infringement of their vested rights and interference with their use of the public trust by the actions of defendants as described in Paragraphs 23 through 45 above.

46. Defendants have known that the operation of the respective sewage systems and dredging operations have caused such polluted waters and destruction of the public trust and harm and damage to the plaintiffs and yet, defendants continue to conduct such hazardous operations and consent to and approve same.

47. The plaintiffs and all within the class have objected and continue to object to the continuing discharge of such sewage, sludge, and other toxic waste materials.

48. The pollution and nuisance caused by defendant New York City as described above in Paragraphs 23 through 47 raises a federal question under Title 28, U.S.C., §1331.

COUNT II

49. Plaintiff incorporates the allegations of Paragraphs 1 through 48 of the Complaint against defendants and makes the same a part hereof.

50. Defendants New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, and the Army Corps have thrown, discharged

and deposited and continue to throw, discharge and deposit refuse matter of any kind or description whatever, other than that flowing from the streets and sewers passing therefrom in a liquid state, into the Hudson River and into the Atlantic Ocean.

51. Such deposits of refuse in such navigable waters violates the Rivers and Harbors Act of 1899, Title 33, U.S.C., §407.

52. On account of such violations by defendants and due to the pollution and deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement of their vested rights and an interference with their use of the public trust.

COUNT III

53. Plaintiff incorporates the allegations of Paragraphs 1 through 52 of the Complaint against defendants and makes them the same a part hereof.

54. Defendants EPA, Train, Army Corps, and Hoffmann are charged with the responsibility of carrying out the objectives of the Marine Protection, Research, and Sanctuaries Act, Title 33, U.S.C., §1401, et seq. which are to prevent or strictly limit the ocean dumping of any material which would adversely affect human health, welfare, or amenities or the marine environment, ecological systems, or economic potentialities.

55. Nevertheless, defendants EPA, Train, Army Corps, and Hoffmann have knowingly, negligently, and wrongfully violated and continue to violate the provisions of the Marine Protection, Research, and Sanctuaries Act in the following manner:

(a) Defendants have failed to develop comprehensive programs and to promulgate regulations and to require sufficient assessments of environmental impact in accordance with the Marine Protection, Research, and Sanctuaries Act to prevent, reduce, and eliminate pollution of navigable waters including the Atlantic Ocean.

(b) Defendants have failed to enforce the standards, to compel compliance, and to take affirmative action to reduce and eliminate violations of the Marine Protection, Research, and Sanctuaries Act despite awareness and knowledge of continued violations and increasing pollution.

(c) Defendants have failed to provide proper means of monitoring and gathering information as required by the Marine Protection, Research, and Sanctuaries Act.

(d) Defendants have repeatedly exceeded their authority as expressly provided in the Marine Protection, Research, and Sanctuaries Act.

(e) In particular, defendants have taken no action, despite enforcement powers, to object to or to set aside the granting of and approval of permits issued to conduct ocean dumping operations as described in Count I above.

56. On account of such violations by defendants and the ensuing pollution and deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare and property and livelihood, as well as an infringement of their vested vested rights and an interference with their use of the public trust.

COUNT IV

57. Plaintiff incorporate the allegations in Paragraphs 1 through 56 of the Complaint against defendants and makes the same a part hereof.

58. Defendants, EPA and Train, are charged with the responsibility of carrying out the objectives of the Water Pollution Control Act, Title 33, U.S.C., §1251 which are to restore and maintain the chemical, physical, and biological integrity of the waters of the United States and to prevent, reduce and eliminate pollution and thereby to restore, preserve and enhance the water resources of the United States.

59. Nevertheless, defendants, EPA and Train, have knowingly, negligently, and wrongfully violated and continue to violate the provisions of the Water Pollution Act in the following manner:

(a) Defendants have failed to develop comprehensive programs and to promulgate regulations and to require sufficient assessments of environmental impact in accordance with the Water Pollution Control Act to prevent, reduce, and eliminate pollution

of navigable waters including the Atlantic Ocean, Hudson River, and New York Harbor.

(b) Defendants have failed to enforce the standards, to compel compliance, and take affirmative action to reduce and eliminate violations of the Water Pollution Control Act despite awarness and knowledge of continued violations and increasing pollution.

(c) Defendants have failed to provide proper means of monitoring and gathering information as required by the Water Pollution Control Act.

(d) Defendants have repeatedly exceeded their authority as expressly provided in the Water Pollution Control Act.

(e) In particular, defendants have taken no action, despite enforcement powers, to object to or to set aside the granting of and approval of permits issued to conduct the discharging of sewerage as described in Count I above.

60. On account of such violations by defendants and the ensuing pollution and deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement of their vested rights and an interference with their use of the public trust.

COUNT V

61. Plaintiff incorporates the allegations of Paragraphs 1 through 60 of the Complaint against the defendants and makes the same a part hereof.

62. The defendants, NYDEC and Reid, are charged with the responsibility to exercise general supervision and control over the waters of New York, to make and enforce rules and regulations to correct and prevent pollution of such waters, and to exercise the powers to compel their operation in a manner which shall protect the public health, welfare, and safety and promote the widest range of beneficial uses of the environment in accordance with the New York Statutes, Environmental Conservation Law §1-0101 et. seq., all of which is to be performed in a manner which conforms to the Water Pollution Control Act, Title 33, U.S.C., §1251 and related regulations and directives.

63. Nevertheless, defendants NYDEC and Reid have knowingly, negligently, and wrongfully violated and continue to violate the New York Statutes, Environmental Conservation Law and the Water Pollution Control Act in the following manner:

(a) The New York Department of Environmental Conservation and Reid have failed to take effective action to prevent, reduce, and eliminate the discharge of pollutants into the Hudson River and into the New York Harbor from outfall structures connected with defendant New York City's sewer system despite the resulting violation of the effluent standards and limits established in accordance with the Water Pollution Control Act.

(b) The New York Department of Environmental Conservation and Reid in their repeated failure to comply with the express requirements of the New York Statutes, Environmental Conservation Laws

and the Federal Water Pollution Control Act have exceeded their authority given in the above statutes.

(c) The New York Department of Environmental Conservation granted and have continue to grant approval of permits allowing for the discharge of pollutants to an extent greater than that allowed by any provisions of the Water Pollution Control Act.

64. On account of such violations by defendants and the ensuing pollution and deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement of their vested rights and in interference with their use of the public trust.

COUNT VI

65. Plaintiff incorporates the allegations of Paragraphs 1 through 64 of the Complaint against defendants and makes the same a part hereof.

66. Defendants, NJDEP and Bardin, are charged with responsibility to promote and plan for environmental conservation and to prevent pollution and ecological disturbance in accordance with Title 13, N.J.S.A., §10-1 et. seq.

67. Nevertheless, defendants NJDEP and Bardin have knowingly, negligently, and wrongfully violated and continue to violate the New Jersey Conservation and Development Law in the following manner:

(a) New Jersey Department of Environmental Protection and Bardin have failed to take effective action to prevent, reduce, and eliminate the discharge of pollutants into the coastal waters adjacent to the Atlantic Ocean and into the Atlantic Ocean itself.

(b) New Jersey Department of Environmental Protection and Bardin have repeatedly failed to comply with the express requirements of the New Jersey Conservation and Development Law and have repeatedly exceeded their authority given in the above statutes.

68. On account of such violations by defendants, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement of their vested rights and an interference with their use of the public trust.

Count VII

69. Plaintiff incorporates the allegations made in Paragraphs 1 through 68 of the Complaint against defendants and makes the same a part hereof.

70. The defendants EPT and Train are charged with the responsibility of carrying out the national policy as expressed in the National Environment Policy Act, Title 42, U.S.C., §4321, et seq., which is to encourage productive and enjoyable harmony between man and his environment, to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man.

71. Defendants EPA and Train have knowingly, negligently, and wrongfully violated and continue to violate the National Environmental Protection Act in the following manner:

> (a) Despite the continued and increasing discharge of pollutants into the Hudson River, New York Harbor and Atlantic Ocean, defendants have failed to develop, plan, and coordinate federal functions, programs, and resources to the end that the marine environment of the Atlantic Ocean might exist without degradation, and that those who use the marine environment might do so without risk to health or safety or other undesirable and unintended consequences.

72. On account of such violations by defendants and the ensuing pollution deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement of their vested rights and an interference with their use of the public trust.

COUNT VIII

73. Plaintiff incorporates the allegations made in Paragraphs 1 through 72 of the Complaint against the defendants and makes the same a part hereof.

74. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle

and Middletown, are charged with the responsibility of carrying out sewage operations in accordance with the provisions and regulations promulgated under the authority of the Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act, and where appropriate in accordance with New York Statutes, Environmental Conservation Law, §1-0101 et seq. or with Title 13 N.J. S.A., §1D-1 et seq., and in addition are charged with the responsibility of carrying out dumping and sewage operations in accordance with the provisions of the permits issued by the EPA, Army Corps or NYDEC.

75. Defendants, New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle and Middletown, have in the past and continue to knowingly, negligently, and wrongfully discharge sewage, sludge and other waste materials in a manner which does not comply with the requirements set forth under the authority of the Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act, and under New York Statutes, Environmental Conservation Law, §1-0101 et seq. or Title 13, N.J.S.A., §1D-1 et seq., and in addition, which does not comply with the requirements of the issued permits.

76. On account of such violations by defendants and the ensuing pollution and deterioration of the marine environment, plaintiffs and all within the class as well as the public in general have suffered and continue to suffer vast damages and harm to their health, safety, welfare, property and livelihood, as well as an infringement on their vested rights and an interference with their use of the public trust.

COUNT IX

77. Plaintiff incorporates the allegations of Paragraphs 1 through 76 of the Complaint against defendants and makes the same a part hereof.

78. Defendants EPA, Train, Army Corps, Hoffman, and the agents of such defendants are charged with the responsibility and duty of carrying out the determinations of officials exercising discretionary functions in accordance with the Water Pollution Control Act and the Marine Protection, Research, and Sanctuaries Act and the National Environmental Policy Act.

79. Defendants EPA, Train, Army Corps, Hoffman, and the agents of such defendants have carried out such duties as regards the issuance of permits, establishment of dumping sites, monitoring of dumping activity, supervision of the development of alternative plans of sewage disposal by permittees, and supervision of the entire disposal operations in a negligent, careless, and wrongful manner, and have failed to exercise due care when defendants and their agents knew or should have known that such actions would create the hazards and dangers complained of in Count I.

80. Defendant Army Corps and its agents have the responsibility and duty of carrying out the dredging operations in a safe manner in accordance with regulations and with reasonable precautions.

81. Defendant Army Corps and its agents have carried out such operations in a negligent, careless, and wrongful manner and have failed to exercise due care when defendant and its agents knew or should have known that such

actions would create the hazards and dangers complained of in Count I.

82. Such failure to exercise due care in carrying out the duties described in Paragraphs 78 to 81 above has resulted in the harm and damage to plaintiffs and the general public as described in Count I and therefore liability may be imposed under Title 28, U.S.C., §1346(b) and Title 28, U.S.C. §2671 et. seq.

COUNT X

83. Plaintiff incorporates the allegations of Paragraphs 1 through 82 of the Complaint against the defendants and makes the same a part hereof.

84. Amendments 5, 9, and 14, to the Constitution of the United States protect the public rights in the natural resource which is the Atlantic Ocean which is a trust for the use and enjoyment of all people at this time and for the future.

85. Defendants New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps by their actions described in Count I have caused unreasonable degradation of the marine environment of the Atlantic Ocean and have thereby infringed the rights of the people, and more particularly the rights of plaintiffs by preventing the use and enjoyment of the public trust.

86. Defendants EPA, Train, Army Corps, Hoffmann, NYDEC, Reid, NJDEP, and Bardin have, by their failure

to act and take appropriate measures, encouraged further degradation of the ocean environment and thereby have infringed the rights of the people and more particularly the rights of plaintiffs by preventing the use and enjoyment of the public trust.

COUNT XI

87. Plaintiff incorporates the allegations in Paragraphs 1 through 86 of the Complaint against the defendants and makes the same a part hereof.

88. Amendment 5 of the Constitution of the United States provides that private property shall not be taken for public use without just compensation.

89. Defendants New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle Middletown, and the Army Corps by their actions described in Count I have taken and destroyed property held in trust for the public benefit and more particularly for plaintiffs' use and enjoyment without providing compensation of any kind.

COUNT XII

90. Plaintiffs incorporate the allegations of Paragraphs 1 through 89 of the Complaint against defendants and make the same the subject matter of a pendent cause of action for common law nuisance.

COUNT XIII

91. Plaintiffs incorporate the allegations of Paragraphs 1 through 90 of the Complaint against defendant and make the same a part hereof.

92. Defendants New York City, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and the Army Corps, by their knowing and negligent actions as described in Count I, have continuously caused physical harm and damage to the property of the public trust which is the waters of the Atlantic Ocean and to the property of the plaintiffs in particular which is clam beds, lobster beds and fishing grounds and marine life therein which is for the use and enjoyment of plaintiffs.

93. Such trespass and harm and damage to the property of the public and of the plaintiffs and all within the class presents a pendent cause of action in trespass.

WHEREFORE, plaintiffs pray:

94. That defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps be enjoined and restrained from dumping sewage, sludge or other pollutants off the coast of the continental United States until a full hearing on the merits of this suit is had.

95. For actual damages in the amount of $250,000,000.00 and punitive damages in the amount of $250,000,000.00, assessed against defendants jointly and severally.

96. For judgment that defendants, EPA, Train, Army Corps and Hoffmann, Secretary of the Army are bound to comply with the requirements of the Water Pollution Control Act, Marine Protection, Research, and Sanctuaries Act, and National Environmental Policy Act in the establishment and enforcement of standards and programs and in the issuance of permits and that such defendants knowing of such requirements have nevertheless failed to comply therewith.

97. For judgment that defendants, NYDEC, Reid, NJ DEP and Bardin are bound to comply with the requirements of the New York Statutes, Environment Conservation Law §1-0101 et. seq. and the New Jersey Conservation and Development Law, Title 13, N.J.S.A., §1D-1 respectively and that defendants are bound to comply with the Federal Water Pollution Control Act and in the establishment and enforcement of standards and programs and in the issuance of permits and that such defendants knowing of such requirements have nevertheless failed to comply therewith.

98. That defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps be fined $50,000.00 for each dumping, from each of several vessels, and for each day on which such dumpings occurred, which was not in compliance with the ocean dumping permits issued by the Administrator of the Environmental Protection Agency and the Secretary of the Army, as provided by 33 U.S.C., §1415(a) and (c), said fines to be paid to the named plaintiffs and the class.

99. That after trial, defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps, be enjoined and restrained from dumping raw sewage or other pollutants into the ocean within 100 miles of the coast of New Jersey until July 31, 1977 at which time the permits expire and at such time, defendants, City of New York and Army Corp of Engineers, be permanently enjoined and restrained from dumping any sewage or other pollutants off the coast of the continental United States.

100. That defendants, City of New York and Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, and Middletown, be permanently enjoined and restrained from dumping and discharging sewage, sludge, and other wastes into New York Harbor and the Hudson River.

101. For Writ of Mandamus ordering the defendants EPA, Train, Army Corps, and Hoffmann, to revoke any and all permits issued to the City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps which allows dumping or discharging sewage, sludge, and other wastes into New York Harbor, Hudson River, and the Atlantic Ocean.

102. That defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps be permanently en-

joined from dumping sewage and sludge in ocean areas within 100 miles of the New Jersey coast.

103. For judgment that defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, EPA, Train, Army Corps, Hoffmann, NYDEC, Reid, NJDEP, and Bardin, have caused a continuing nuisance to be committed upon the lands and waters of New Jersey used for pleasure, relaxation, and the business of named plaintiffs and the class, and ordering the defendants, and each of them, to cease and desist from such nuisance, and abate the same by not dumping sewage within 100 miles of the New Jersey coastline, and order the defendants to compensate the plaintiff in the amount of $250,000,000.00 for the injury and damage occasioned by the nuisance.

104. That defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, EPA, Train, Army Corps, Hoffmann, NYDEC, Reid, NJDEP, and Bardin, bear all costs necessary to correct the damage caused by their conduct.

105. For judgment that defendants, City of New York, Beame, Glen Cove, Long Beach, W. Long Beach, Westchester Co., Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, and Army Corps, are bound to observe the standards set in the ocean dumping permits issued to them by the EPA and/or Secretary of the Army, and that defendants, mentioned above, knowing of such standards have nevertheless failed to comply therewith.

106. For costs of suit, including reasonable attorneys' and expert witnesses' fees, as provided by 33 U.S.C. §1365(d) and §1415(g)(4).

107. That defendants New York City, Beame, Army Corps, Bergen Co., Essex Co., Passaic Val., Middlesex Co., Linden Roselle, Middletown, Glen Cove, Long Beach, W. Long Beach, and Westchester Co. be fined for each violation of the Rivers and Harbors Act of 1899 as set out in Count II in accordance with the provisions of such Act, Title 33, U.S.C., §411.

108. That plaintiffs be granted one half of the fines assessed against defendants in accordance with the prayer in Paragraph 108 and in accordance with the provisions of the Rivers and Harbors Act of 1899, Title 33, U.S.C., §411.

109. For such other and further relief as the Court deems proper.

Respectfully submitted,

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Note Concerning Opinion and Judgment of Court of Appeals and Opinion and Order of District Court

The opinion and the judgment of the Court of Appeals appear in the appendix to the petition for certiorari of Middlesex County Sewerage Authority et al. at pp. 1a and 38a, respectively; and in the appendix to the petition for certiorari of Environmental Protection Agency et al. at pp. 1a and 32a, respectively.

The opinion and order of the District Court appear in the appendix to the petition for certiorari of Middlesex County Sewerage Authority et al. at pp. 40a and 68a respectively; and in the appendix to the petition for certiorari of Environmental Protection Agency et al. at pp. 35a and 60a, respectively.

Order Granting Writs

(Entered October 20, 1980)

CERTIORARI GRANTED

79-1711) MIDDLESEX CO. SEWERAGE v. NATL. SEA CLAMMERS ASSN.

79-1754) JOINT MEETING ESSEX & UNION v. NATL. SEA CLAMMERS ASSN.

79-1760) NEW YORK, ET AL. v. NATL. SEA CLAMMERS ASSN.

80-12) EPA, ET AL. v. NATL. SEA CLAMMERS ASSN.

The petitions for writs of certiorari are granted limited to the following questions:

1. Whether the Federal Water Pollution Control Act, 33 U.S.C. (& Supp. I) §§ 1251 *et seq.*, and the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. (& Supp. I) §§ 1401 *et seq.*, imply a private right of action independent of the rights explicitly created by the citizens suit provisions of those Acts, 33 U.S.C. §1415 (g).

2. Whether a private citizen has standing to maintain a federal common law nuisance action for alleged damages sustained resulting from ocean pollution as a general federal question under 28 U.S.C. §1331.

3. Whether any federal common law nuisance action for alleged damages sustained resulting from ocean pollution, if available to a private citizen, is not preempted by the present regulatory scheme governing ocean pollution established by the Federal Water Pollution Control Act and the Marine Protection, Research and Sanctuaries Act.

The cases are consolidated and a total of one hour is allotted for oral argument.